

IN THE MATTER OF MERCHANT MARINER'S DOCUMENT NO. Z-867054 AND ALL
OTHER SEAMAN DOCUMENTS

Issued to: John H. Chapman, Jr.

DECISION OF THE COMMANDANT
UNITED STATES COAST GUARD

1549

John H. Chapman, Jr.

This appeal has been taken in accordance with Title 46 United States Code 239(g) and Title 46 Code of Federal Regulations 137.30-1.

By order dated 25 October 1965, an Examiner of the United States Coast Guard at Houston, Texas revoked Appellant's seaman documents upon finding him guilty of misconduct. The specification found proved alleges that while serving as night cook and baker on board the United States SS DEL ALBA under authority of the document above described, on 8 October 1965, Appellant assaulted and battered Donald A. Carter, a member of the crew, with a dangerous weapon, to wit: a knife.

At the hearing, Appellant was represented by professional counsel. Appellant entered a plea of not guilty to the charge and specification.

The Investigating Officer introduced in evidence the testimony of eight witnesses including that of the alleged victim Carter.

In defense, Appellant and a character witness testified. Appellant stated that, when Carter approached with his left hand in a pocket, Appellant took a knife out of a drawer to protect himself because Carter was known as a knife man; Appellant does not know what happened after he picked up the knife.

At the end of the hearing, the Examiner rendered a written decision in which he concluded that the charge and specification had been proved, and entered the above order of revocation.

FINDINGS OF FACT

On and before 8 October 1965, Appellant was serving as night cook and baker on board the United States SS DEL ALBA and acting under authority of his document.

About 1730 on 8 October 1965, at sea, Appellant and the Chief Steward were eating while standing at a table in the galley when saloon pantryman Carter entered with two loaves of fresh bread obtained from the reefer. The Chief Steward told Carter to take the bread back to the reefer and get

the bread that was already sliced. Appellant said he agreed with the Chief Steward. Carter became angry and said he would not do this as he addressed the other two seamen with foul and abusive language. Appellant told Carter not to talk to Appellant like that. When Carter continued talking in the same manner, while walking around in the galley waving his arms, the Chief Steward ordered Carter to leave the galley.

Carter started to walk toward the door in order to leave the galley. The Chief Steward, walking behind Carter, was between the other two seamen. Carter was still directing abusive language toward Appellant.

About this time, Appellant reached in a drawer and picked up a French knife with a blade approximately ten inches long. Appellant then said something which indicated that he intended to "take" Carter. When he heard this, Carter stopped and turned to face Appellant. The latter quickly stepped toward Carter and stabbed him in the abdomen with the knife, inflicting a serious wound. Carter had no weapon in either hand but his left hand was in a pocket (where he sometimes kept a paring knife) just before he was stabbed.

After Carter was injured, he ran out of the galley and went to the bridge. Appellant put the knife back in the drawer, remained in the galley, and gave the knife to the Master when he entered the galley and asked for it.

Carter received a cut about four or five inches long. The wound was bleeding and some of his intestines were sticking out. Carter was treated on board, the ship altered course to rendezvous with a helicopter, Carter was taken off the ship and flown to the Public Health Service Hospital at New Orleans.

Appellant has no prior record.

BASES OF APPEAL

This appeal has been taken from the order imposed by the Examiner. It is contended that Carter had caused tension in the galley during the entire trip by his antagonistic attitude and had drawn a paring knife on another member of the crew while ashore some weeks earlier. Appellant thought of the latter incident as Carter advanced toward Appellant with his hand in his pocket and using abusive language. Therefore, Appellant grabbed a knife to use in self-defense.

OPINION

Appellant has no prior record during 18 years at sea, he is a good family man, and has no other livelihood. As indicated by the above findings of fact there is substantial evidence to support the conclusion that Appellant was guilty of assault and battery with a dangerous weapon. The use of such a weapon in self-defense was not justified because there is neither credible evidence that Appellant was in imminent danger of serious bodily injury nor basis for a reasonable belief that he was

in imminent danger of great, or any, bodily injury when he stabbed Carter. Commandant's Appeal Decisions Nos. 1188, 1322, and 1500.

Appellant's own testimony helps to establish the facts that Carter was not moving toward Appellant, but that the latter approached Carter in order to stab him. This is evident from Appellant's testimony that the Chief Steward was between Appellant and Carter. Since Carter was walking toward the door followed by the Chief Steward, the only logical inference is that Carter was moving away from Appellant, since the Chief Steward was "in between us" according to Appellant (R. 82).

This is further supported by the testimony of the only two witnesses to the stabbing other than the two participants. The pantryman testified that Carter stopped and turned to face Appellant just before the stabbing (R. 51, 56). The Chief Steward and pantryman testified that Appellant "stepped" (R.38) or "rushed" (R. 57) toward Carter and stabbed him. In his deposition, Carter states that Appellant had to pass the Chief Steward in order to stab him (Deposition, p. 9).

For these reasons, the contention that Carter was advancing toward Appellant is rejected. Furthermore, there is no indication that Carter, at any time, showed by words or gestures that he intended to injure Appellant. The fact that Carter, as he admitted, had his left hand in his pocket just prior to the attack cannot be considered as such a gesture since he was walking away from Appellant with his back turned to him.

Under the circumstances, Appellant's reliance on a prior incident where Carter drew a paring knife on another member of the crew while ashore is completely without merit, and verbal provocation does not justify assault and battery of any kind. The real reason for Appellant's conduct does not seem to have been due to fear of Carter, but appears to have been the result of Appellant's misbehavior in the performance of his duties throughout the voyage. The cumulative effect of such incidents apparently caused Appellant to act in a manner which was not compatible with his prior unblemished service for 18 years at sea and his good reputation in the community where he lives.

Nevertheless, one such offense as this is sufficient to revoke a seaman's right to serve on merchant vessels of the United States. In the interest of promoting safety at sea by protecting other seamen against a possible recurrence of this type of misconduct by Appellant, the order of revocation must be upheld.

ORDER

The order of the Examiner dated at Houston, Texas, on 25 October 1965, is AFFIRMED.

P. E. Trimble
Rear Admiral, United States Coast Guard
Acting Commandant

Signed at Washington, D. C., this 4th day of May 1966.

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